Supreme Court, U.S.
FILED
NOV 7 2003
OFFICE OF THE CLERK

No. 02-1657

IN THE

Supreme Court of the United States

RANDALL C. SCARBOROUGH,

Petitioner,

v.

ANTHONY J. PRINCIPI,
SECRETARY OF VETERANS AFFAIRS,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit

JOINT APPENDIX

THEODORE B. OLSON
Solicitor General
(*Counsel of Record*)
Department of Justice
Washington, D.C. 20530
(202) 514-2217

Counsel for Respondent

BRIAN WOLFMAN
(*Counsel of Record*)
SCOTT L. NELSON
ALAN B. MORRISON
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, NW
Washington, D.C. 20009
(202) 588-1000

Counsel for Petitioner

Petition For A Writ Of Certiorari Filed May 9, 2003

Certiorari Granted September 30, 2003

TABLE OF CONTENTS

Item **Page**

Relevant Docket Entries from U.S. Court of Appeals for Veterans Claims 1

In the U.S. Court of Appeals for Veterans Claims:

[First] Application for Fees and Other Costs (dated 7/20/99) 4

Notice of Returned Papers (dated 7/23/99) 6

[Second] Application for Fees and Other Costs (dated 8/17/99; filed 10/4/99) 8

Order Filing Fee Application (filed 10/4/99) 10

Amendment to Fee Application (filed 12/9/99) . . . 11

Note: The decision of the U.S. Court of Appeals for the Federal Circuit under review is reproduced at page 1a of the appendix to the Petition for a Writ of Certiorari.

RELEVANT DOCKET ENTRIES

United States Court of Appeals for Veterans Claims

Docket No. 98-1590

Randall C. Scarborough, Appellant,

v.

Secretary of Veterans Affairs, Appellee.

Date	Filings and Proceedings
8/28/98	Notice of Appeal (M - 8/1/98) (GATEAC)
9/1/98	Notice of Docketing for FF or MOT by 9/15/98; BVA DEC by 10/1/98; DR by 11/2/98 (M - 8/1/98) (GATEAC)
9/21/98	Copy of BVA Decision (M - 9/21/98) (WILLIA)
4/22/99	Appellant's Brief (M - 3/22/99) (GATEAC)
5/10/99	Appellee's Brief (M - 5/10/99) (DESHAP)
5/24/99	Appellant's Reply Brief (M - 5/21/99) (DESHAP)
7/9/99	Ord that the BVA decn is vacated and the matter is remanded (KRAMEK)

7/22/99	RECEIVED: Application for atty's fees under EAJA (M - 7/20/99) (MEYERK)
7/23/99	Notice returning appellant's EAJA applic (M - 7/20/99) (MEYERK)
8/2/99	Judgment (M - 5/21/99) (TOBESS)
8/19/99	RECEIVED: Application for atty's fees under EAJA (M - 8/17/99) (MEYERK)
10/4/99	Mandate (M - 7/20/99) (TOBESS)
10/4/99	Application for atty's fees under EAJA (M - 9/17/99) (TOBESS)
10/4/99	Ord that the appellee's resp is due 11/3/99 (STS)
11/3/99	Mo of appellee to ext time to file a response to EAJA applic until 12/3/99 (M - 11/3/99)
11/3/99	Clerk's ord granting appellee's mo for ext of time until 12/3/99 (KM)
12/3/99	Mo of appellee to dismiss EAJA applic (M - 12/3/99)
12/9/99	Appellant's response to appellee's mo to dismiss and mo for lv to suppl EAJA applic (M - 12/9/99) (MEYERK)
12/9/99	RECEIVED: Amendment to Application for atty's fees under EAJA (M - 12/9/99) (MEYERK)

1/6/00	Mo of appellee for leave to file a response to appellant's mo for lv to suppl filing (M - 1/6/00)
1/6/00	RECEIVED: Appellee's response to appellant's mo for lv to suppl filing (M - 1/6/00) (MEYERK)
5/31/00	Ord this appeal is submitted to Judges Kramer, Holdaway and Greene (RFC) (KRAMEK) (HOLDAR) (GREENW)
6/14/00	Ord that appellant's EAJA applic is dismissed for lack of juris (KRAMEK) (HOLDAR) (GREENW)
8/14/00	Appellant's Notice of Appeal to the USCA for the Fed Cir (MEYERK)

IN THE UNITED STATES COURT
OF VETERANS APPEALS

RANDALL C. SCARBOROUGH, Appellant,	)	
v.	)	APPLICATION FOR FEES AND OTHER COSTS
TOGO D. WEST, JR., Secretary of Veterans Affairs,	)	
Appellee.	)	

NOW COMES the undersigned counsel for the Appellant, and pursuant to the Order for remand filed in the above case on July 9, 1999, hereby applies to the court for an order approving its fees and other costs pursuant to 28 USC §2412.

In support of said application, the undersigned shows the court that:

1. Appellant is the prevailing party as defined in 28 USC §2412 in the above captioned matter pursuant to an Order for remand filed in this court on July 9, 1999.

2. Appellant's net worth did not exceed $2,000,000.00 as of the date of the filing of this action.

3. The undersigned counsel has represented the Appellant since August 28, 1998.

4. The undersigned has incurred legal fees in connection with the appeal of this matter such as:

a. Preparation of Record on Appeal

b. Telephone conference with Clerk/Court of Veterans Appeals

c. Prepare Appellant's Brief

d. Prepare Appellant's Reply Brief

5. The attached statement itemizes the expenses incurred by the undersigned with respect to this matter.

WHEREFORE, the undersigned counsel for the Appellant respectfully prays the court for an order allowing fees in the amount of $19,333.75 and costs in the amount of $117.80.

This the 20 day of July, 1999.

WALLACE, CREECH & SARDA, L.L.P.

Peter J. Sarda
Attorneys for Appellant
N.C. Bar No. 7300
Post Office Box 12065
Raleigh, North Carolina 27605
Telephone: (919) 782-9322

UNITED STATES COURT OF APPEALS FOR
VETERANS CLAIMS
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

NOTICE OF RETURNED PAPERS

No. 98-1590 Date: July 23, 1999

RANDALL C. SCARBOROUGH, Appellant,

v.

TOGO D. WEST, JR.,
ACTING SECRETARY OF VETERANS AFFAIRS, Appellee.

To the Appellant: The attached material that you sent to the Court is not accepted for filing. It is returned without action because:

Your application for attorney fees and expenses under the Equal Access to Justice Act (EAJA) is premature and is not accepted for filing. Rule 39 provides that your application must be filed within 30 days **after** the Court's judgement becomes final. Judgement will be entered after the time for post-decision motions under Rule 35 expires. That judgement will become final sixty days thereafter unless there is an appeal to the U.S. Court of Appeals for the Federal Circuit. Then you may file and serve your application.

ROBERT F. COMEAU

Clerk of the Court

Attachments (to appellant only):

EAJA application, received 7/22/99

Copies to:

Peter J. Sarda, Esq.
P.O. Box 12065
Raleigh, NC 27605

General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

IN THE UNITED STATES COURT
OF VETERANS APPEALS

RANDALL C. SCARBOROUGH, Appellant,	)	
v.	)	APPLICATION FOR FEES AND OTHER COSTS
TOGO D. WEST, JR., Secretary of Veterans Affairs,	)	
Appellee.	)	**[filed 10/4/99]**

NOW COMES the undersigned counsel for the Appellant, and pursuant to the Order for remand filed in the above case on July 9, 1999, hereby applies to the court for an order approving its fees and other costs pursuant to 28 USC §2412.

In support of said application, the undersigned shows the court that:

1. Appellant is the prevailing party as defined in 28 USC §2412 in the above captioned matter pursuant to an Order for remand filed in this court on July 9, 1999.

2. Appellant's net worth did not exceed $2,000,000.00 as of the date of the filing of this action.

3. The undersigned counsel has represented the Appellant since August 28, 1998.

4. The undersigned has incurred legal fees in connection with the appeal of this matter such as:

a. Preparation of Record on Appeal

b. Telephone conference with Clerk/Court of Veterans Appeals

c. Prepare Appellant's Brief

d. Prepare Appellant's Reply Brief

5. The attached statement itemizes the expenses incurred by the undersigned with respect to this matter.

WHEREFORE, the undersigned counsel for the Appellant respectfully prays the court for an order allowing fees in the amount of $19,333.75 and costs in the amount of $117.80.

This the 17 day of August, 1999.

WALLACE, CREECH & SARDA, L.L.P.

_____

Peter J. Sarda
Attorneys for Appellant
N.C. Bar No. 7300
Post Office Box 12065
Raleigh, North Carolina 27605
Telephone: (919) 782-9322

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

[filed 10/4/99]

No.98-1590

RANDALL C. SCARBOROUGH, APPELLANT,

v.

TOGO D. WEST, JR.,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

ORDER

The appellant's premature application for attorney fees and expenses is filed today. It is ORDERED that the Secretary's response is due within 30 days after the date of this order.

DATED: Oct 4 1999

FOR THE COURT:

ROBERT F. COMEAU
Clerk of the Court

By: _____
Deputy Clerk

Copies to:

[names of counsel omitted]

IN THE UNITED STATES COURT
OF APPEALS FOR VETERANS CLAIMS

RANDALL C. SCARBOROUGH, Appellant,	)
v.	) Vet. App. No. 98-1590-
	) EAJA
TOGO D. WEST, JR.,	) VA File No. SS 246
Secretary of Veterans Affairs,	) 82 9124
Appellee.	) **[filed 12/9/99]**

AMENDMENT TO FEE APPLICATION

The Appellant hereby amends his Application for Fees and Costs filed October 4, 1999 by adding the following paragraph:

6. The government's position that the Appellant had not shown clear and unmistakable error in the 1976 R.O.'s decision was not substantially justified. Because a cursory review of the medical records of the veteran show the error by the R.O. and because the authority cited by the government in its brief were mere recitations of the law on clear and unmistakable error, without an analysis of the law to the facts in this case, the government's defense of the Appellant's claim was not substantially justified.

In all other respects, the veteran reasserts his statements in the original filing under 28 U.S.C. §2412.

This the 9 day of December, 1999.

WALLACE, CREECH & SARDA, L.L.P.

Peter J. Sarda
Attorneys for Appellant
Post Office Box 12065
Raleigh, North Carolina 27605
Telephone: (919) 782-9322

401